IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 348 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATTSINH KANTISINH DABHI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 348 of 2004

MR MB MASARIA for Petitioner No. 1-2

MR KT DAVE ADDL PP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI

Date of decision: 23/06/2004

ORAL JUDGEMENT

Rule. Mr. Dave, learned Addl.P.P. waives service of Rule on behalf of the respondent State. By consent, Rule is fixed forthwith.

2. Heard Mr. Masaria, learned advocate for the petitioners and Mr. K.T. Dave, learned Addl.P.P. for the respondent State.

3. This revision application is filed by the petitioners original accused Nos. 1 and 2 and challenged the order passed by the learned Presiding Officer, Fast Track Court, Nadiad dated 8.4.2004 while deciding application Ex. 35 in Sessions Case No. 276 of 2000 filed by the petitioners through advocate on 1.3.2004 under Section 311 of the Criminal Procedure Code praying for recalling of the witness examined by the prosecution namely Smt. Manjulaben Jitsinh - PW-5 at Ex. 24 and witness Jitsinh Chauhan PW-3 - complainant on the ground that during cross-examination due to inadvertence certain contradictions and omissions are not brought. The petitioners have while filing this revision application also annexed the application Ex. 35 and the order passed thereon by the learned Presiding Officer and the complaint of Shri Jitsinh dated 29.4.2000 and his evidence recorded before the trial Court at Ex. 20 and the statement of Manjiben wife of Natusinh dated 29.4.2000 and her evidence recorded at Ex. 24 and the certified copy of the application Ex. 31 submitted before the trial Court through advocate of the accused dated 17.1.2004 for recalling the witness PW-7 Mansinh Becharbhai on the ground that defence desire to put some important questions to the said witness in the interest of justice. On the said application, the learned Judge as per order dated 17.1.2004 has kept the said application for hearing. It is also brought to my notice by Mr. Masaria that application Ex. 31, though is kept for hearing as per order dated 17.1.2004, the said application is pending and no hearing has taken place. Mr. Masaria, learned advocate for the petitioners has while arguing the matter taken me through the petition and the documents attached thereto with the order under challenge and he tried to demonstrate before me while taking me through the statement of the complainant and witnesses recorded and evidence recorded before the court, for which, the application for recalling the witnesses was submitted before the trail Court and he submitted that in light of the contentions raised by him and in the interest of justice, learned trial Judge was not justified in rejecting the application and prayed that the revision application be allowed and permission for recalling the witnesses be given.

4. Mr. K.T. Dave, learned Addl.P.P. has supported the order under challenge and opposed this revision

application, as according to him that looking to the order under challenge, the learned Presiding Judge has considered several authorities cited before him and on considering the contentions raised before him, according to learned trial Judge that if such application for recalling the witness is entertained and granted, then, there will be delay in disposal of the case and further court's time will be wasted and in some case, there is also a possibility to fill-in lacuna and further for which the reason given for recalling the witness shown in the application, it cannot be granted and accordingly, rejected the application. Mr. Dave has further submitted that in the present case, accused are on bail and application of similar nature Ex. 31 is pending, the court may give necessary direction in the interest of justice.

5. In light of the contentions raised before me and without expressing the contentions raised before me by the counsel and without expressing on the order under challenge and further in the interest of justice, the Court is of the view that when application Ex. 31 of similar nature is pending and only ground, which the learned Presiding Judge has given in the last para of the order, it will be in the fitness of thing to direct the learned Presiding Judge to consider afresh the application Ex. 35 along with application Ex. 31, which is pending and decide the same in accordance with law. I am told that hearing of the Sessions Case is fixed by the learned Presiding Judge on 29th June, 2004, accordingly, even considering the delay aspect, learned Presiding Judge is directed to decide both the applications namely application Ex. 31 and application Ex. 35 on or before 10th July, 2004 in accordance with law. Accordingly, the order below Ex. 35 dated 8.4.2004 is set aside. Revision Application is allowed. Rule is made absolute in above terms.

(D.K.Trivedi, J.)
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